

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

Willie Lee Burke, #3460-066,)	C/A No. 8:05-0860-CMC-BHH
)	
Petitioner,)	
)	
v.)	ORDER
)	
Ruth Yancey,)	
)	
Respondent.)	
)	

This action is before the court pursuant to a *pro se* petition filed pursuant 28 U.S.C. § 2241. Petitioner is presently a federal inmate at the Federal Correctional Institution in Salters, South Carolina, where he is serving a sentence of 360 months' incarceration after his conviction in the District of Maryland in 1992.

In accordance with the court's order of reference, 28 U.S.C. § 636(b), and Local Rule 73.02 (B)(2)(b), and (c), DSC, this matter was referred to United States Magistrate Judge Bruce H. Hendricks for pre-trial proceedings and a Report and Recommendation. On April 5, 2005, the Magistrate Judge issued a Report recommending this case be dismissed without prejudice and without issuance and service of process because Petitioner is barred from raising his claims under §2241 because §2255 provides an adequate remedy to Petitioner's claims. The Magistrate Judge advised Petitioner of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. Petitioner has filed no objections and the time for doing so has expired.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After reviewing the Petition and the Report and Recommendation of the Magistrate Judge, the court agrees with the recommendation of the Magistrate Judge. Accordingly, the Report and Recommendation of the Magistrate Judge is adopted and incorporated by reference.

Therefore, this action is dismissed without prejudice and without requiring Respondent to file a return.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
May 17, 2005

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